



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं 29] नई दिल्ली, मंगलवार, दिसम्बर 14, 1999 / अग्रहायण 23, 1921
No. 29] NEW DELHI, TUESDAY, DECEMBER 14, 1999 / AGRAHAYANA 23, 1921

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 14-12-1999

BILL NO. 123 OF 1999

A Bill to provide for the establishment of an Authority to give an effective system for protection of the rights of plant breeders and farmers, and to encourage the development of new varieties of plants, and to give effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the Agreement on Trade Related Aspects of Intellectual Property Rights.

WHEREAS the Final Act, embodying the results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on the 15th day of April, 1994 provides for the establishment of the World Trade Organisation;

AND WHEREAS the Agreement on Trade Related Aspects of Intellectual Property Rights is part of the said Final Act;

AND WHEREAS India, having ratified the said Final Act, should, *inter alia*, make provision for giving effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the Agreement on Trade Related Aspects of Intellectual Property Rights relating to protection of plant varieties;

AND WHEREAS, to give effect to aforesaid sub-paragraph (b) of paragraph 3 of article 27, it is considered necessary to undertake measures for the protection of the rights of the plant breeders and farmers and to encourage the development of new varieties of plants;

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Protection of Plant Varieties and Farmers' Rights Act, 1999.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Authority" means the Protection of Plant Varieties and Farmers' Rights Authority established under sub-section (1) of section 3;

(b) "benefit sharing", in relation to a variety, means such proportion of the benefit accruing to a breeder of such variety or such proportion of the benefit accruing to the breeder from an agent or a licensee of such variety, as the case may be, for which a claimant shall be entitled as determined by the Authority under section 26;

(c) "breeder" means a person who has bred, discovered or developed any variety;

(d) "Chairperson" means the Chairperson of the Authority appointed under clause (a) of sub-section (5) of section 3;

(e) "convention country" means a country which has acceded to an international convention for the protection of plant varieties to which India has also acceded, or a country which has a law on protection of plant varieties on the basis of which India has entered into an agreement for granting plant breeders' right to the citizens of both the countries;

(f) "denomination", in relation to a variety or its propagating material or essentially derived variety or its propagating material, means the denomination of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, expressed by means of letters or a combination of letters and figures written in any language;

(g) "essential characteristics" means such heritable traits of a plant variety which are determined by the expression of one or more genes of other heritable determinants that contribute to the principal features, performance or value of the plant variety;

(h) "essentially derived variety", in respect of a variety (in this clause to be called "the initial variety"), shall be said to be essentially derived from such initial variety when it—

(i) is predominantly derived from such initial variety; or from a variety that is itself predominantly derived from such initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety;

(ii) is clearly distinguishable from such initial variety; and

(iii) conforms to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety except variation in such characteristics which result in the process of derivation;

54 of 1966

(i) "extant variety" means a variety which is notified under section 5 of the Seeds Act, 1966 or is eligible for protection under section 13 or a variety about which there is common knowledge and includes the propagating material of such extant variety;

(j) "farmer" means any person who cultivates crops either by cultivating the land himself or through any other person and includes a person who conserves and preserves, severally or jointly, with any person any wild species or traditional varieties, or adds value to such wild species or traditional varieties through selection and identification of their useful properties;

(k) "Gene Fund" means the National Gene Fund constituted under sub-section (1) of section 52;

(l) "germplasm" means a plant, in whole or in parts, and includes its propagules, namely, a seed, vegetative parts, tissue culture, cell culture, gene and deoxyribonucleic acid based sequences;

(m) "member" means a member of the Authority appointed under clause (b) of sub-section (5) of section 3 and includes the Member-Secretary;

(n) "plant", in relation to a cultivated plant and its wild relative, means any organism or a part thereof which belongs to the kingdom of plant and not included in the animal kingdom, but does not include micro-organism;

(o) "prescribed" means prescribed by rules made under this Act;

(p) "propagating material" means any plant or its component or part thereof including an intended seed which is capable of or suitable for regeneration into a plant;

(q) "Register" means a National Register of Plant Varieties referred to in section 12;

(r) "Registrar" means a Registrar of Plant Varieties appointed under sub-section (4) of section 11 and includes the Registrar-General;

(s) "Registrar-General" means the Registrar-General of Plant Varieties appointed under sub-section (3) of section 11;

(t) "Registry" means the Plant Varieties Registry referred to in sub-section (1) of section 11;

(u) "regulations" means regulations made by the Authority under this Act;

(v) "seed" means a type of living embryo or propagule capable of regeneration and giving rise to a plant which is true to such type;

(w) "variety", in relation to plants, means a plant grouping within a single botanical taxon of the lowest known rank, which can be—

(i) defined by the expression of the fundamental characteristics resulting from a given genotype of that plant grouping;

(ii) distinguished from any other plant grouping by expression of at least one of the said fundamental characteristics; and

(iii) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation and includes propagating material of such variety, extant variety, transgenic variety and essentially derived variety.

CHAPTER II

THE PLANT VARIETIES AND FARMERS' RIGHTS PROTECTION AUTHORITY

Establishment
of Authority.

3. (1) The Central Government shall, by notification in the Official Gazette, establish an Authority to be known as the Protection of Plant Varieties and Farmers' Rights Authority for the purposes of this Act.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of properties, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The head office of the Authority shall be at such place as the Central Government may, by notification in the Official Gazette, specify and the Authority may, with the previous approval of the Central Government, establish branch offices at other places in India.

(4) The Authority shall consist of a Chairperson and nine *ex officio* members.

(5) (a) The Chairperson to be appointed by the Central Government, shall be a person of outstanding calibre and eminence in the field of plant varietal research, or in the related field of agricultural development, and having not less than twenty-five years of practical experience in either field.

(b) The members of the Authority, to be appointed by the Central Government, shall be as follows, namely:—

(i) the Agriculture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, Member, *ex officio*;

(ii) the Deputy Director General incharge of Crop Sciences, Indian Council of Agricultural Research, New Delhi, Member, *ex officio*;

(iii) the Joint Secretary incharge of Seeds, Government of India, Department of Agriculture and Cooperation, Member, *ex officio*;

(iv) the Horticulture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, Member, *ex officio*;

(v) the Director, National Bureau of Plant Genetic Resources, New Delhi, Member, *ex officio*;

(vi) one member not below the rank of Joint Secretary to the Government of India, to represent the Department of Bio-technology of that Government, Member, *ex officio*;

(vii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry dealing with matters related to Environment and Forest of the Government of India, Member, *ex officio*;

(viii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Law of the Government of India, Member, *ex officio*;

(c) The Registrar General shall be the *ex officio* Member-Secretary of the Authority.

(6) The term of office of the Chairperson and the manner of filling the post shall be such as may be prescribed.

(7) The Chairperson shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed.

(8) The Chairperson may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, he shall be deemed to have vacated his office.

(9) On the resignation of the Chairperson or on the vacation of the office of Chairperson for any reason, the Central Government may appoint one of the members to officiate as Chairperson till a regular Chairperson is appointed in accordance with clause (a) of sub-section (5).

4. (1) The Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be prescribed.

Meetings of Authority.

(2) The Chairperson of the Authority shall preside at the meetings of the Authority.

(3) If for any reason the Chairperson is unable to attend any meeting of the Authority, any member of the Authority chosen by the members present at the meeting shall preside at the meeting.

(4) All questions which come before any meeting of the Authority shall be decided by a majority of the votes of the members of the Authority present and voting and in the event of equality of votes, the Chairperson of the Authority or in his absence, the person presiding shall have and exercise a second or casting vote.

(5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member concerned or interested shall not attend that meeting.

(6) No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as the Chairperson or a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

5. (1) The Authority may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

Committees of Authority.

(2) The persons appointed as members of the committee under sub-section (1) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.

6. Subject to such control and restriction as may be prescribed, the Authority may appoint such other officers and employees as may be necessary for the efficient performance of its functions and the method of appointment, the scale of pay and allowances and other conditions of service of such other officers and employees of the Authority shall be such as may be prescribed.

Officers and employees of Authority.

7. The Chairperson shall be the Chief Executive of the Authority and shall exercise such powers and perform such duties as may be prescribed.

Chairperson to be Chief Executive.

8. (1) It shall be the duty of the Authority to promote, by such measures as it thinks fit, the encouragement and development of new varieties of plants and protect the rights of the farmers and breeders with respect to those varieties of plants.

General functions of Authority.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1) may provide for—

(a) the registration of extant or new plant varieties to the researchers and breeders subject to such terms and conditions and in the manner as may be prescribed;

(b) developing characterisation and documentation of varieties;

(c) compulsory cataloguing facilities for all varieties of plants, seeds and germplasm;

(d) ensuring that seeds of the varieties registered under this Act are available to the farmers and providing for compulsory licensing of such varieties if the breeder of such varieties or any other person entitled to produce such variety under this Act does not arrange for production and sale of the seed in the manner as may be prescribed;

(e) collecting statistics with regard to plant varieties, seeds and germplasm for compilation and publication;

(f) ensure the maintenance of Register.

Authentication
of orders of
Authority.

9. All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other member authorised by the Authority in this behalf.

Delegation.

10. The Authority may, by general or special order in writing, delegate to the Chairperson, any member or officer of the Authority subject to such conditions or limitations, if any, as may be specified in the order, such of its powers and functions (except the power to make regulations under section 87) under this Act as it may deem necessary.

CHAPTER III

THE REGISTRY, REGISTRATION OF VARIETIES AND CONDITIONS OF REGISTRATION

Registry and
offices thereof.

11. (1) The Central Government shall establish for the purposes of this Act, a Registry which shall be known as the Plant Varieties Registry.

(2) The head office of the Plant Varieties Registry shall be located in the head office of the Authority, and for the purpose of facilitating the registration of plant varieties, there may be established, at such places, as the Authority may think fit, branch offices of the Registry.

(3) The Authority shall appoint a Registrar General of Plant Varieties who shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and such other matters as may be prescribed.

(4) The Authority may appoint such number of Registrars as it thinks necessary for registration of plant varieties under the superintendence and direction of the Registrar General under this Act and may make regulations with respect to their duties and jurisdiction.

(5) The term of office and the conditions of service of the Registrars shall be such as may be provided by regulations.

(6) The Authority may, by notification in the Official Gazette, define the territorial limits within which a branch office of the Registry may exercise its functions.

(7) There shall be a seal of the Plant Varieties Registry.

National
Register of
Plant Varieties.

12. (1) For the purposes of this Act, a register called the National Register of Plant Varieties shall be kept at the head office of the Registry, wherein shall be entered the names of all the registered plant varieties with the names and addresses of their respective breeders, the right of such breeders in respect of the registered variety, the particulars of the denomination of each registered variety, its seed or other propagating material along with specification of salient features thereof and such other matters as may be prescribed.

(2) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Authority.

(3) There shall be kept at each branch office of the Registry a copy of the register and such other documents as the Central Government may, by notification in the Official Gazette, direct.

CHAPTER IV

REGISTRATION OF PLANT VARIETIES

Application for
registration.

13. Any person specified in section 15 may make an application to the Registrar for registration of any variety of such genera or species as specified under sub-section (2) of section 29.

Registrable
varieties.

14. (1) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability:

Provided that an extant variety shall be registered even if it does not conform to the criteria of novelty.

(2) Notwithstanding anything contained in sub-section (1), no variety shall be registered under this Act if such variety contains any gene or gene sequence involving any technology including terminator technology which is injurious to the life or health of human beings, animals or plants.

(3) For the purposes of sub-section (1), a new variety shall be deemed to be—

(a) novel, if, at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety—

(i) in India, earlier than one year; or

(ii) outside India, in the case of trees or vines earlier than six years, or, in any other case, earlier than four years,

before the date of filing such application:

Provided that a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection:

Provided further that the fact that on the date of filing the application for registration the propagating or harvested material of such variety has become a matter of common knowledge other than through the aforesaid manner shall not affect the criteria of novelty for such variety;

(b) distinct, if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application.

Explanation.—For the removal of doubts, it is hereby declared that the filing of an application for the granting of a breeder's right to a new variety or for entering such variety in the official register of varieties in any convention country shall be deemed to render that variety a matter of common knowledge from the date of the application in case the application leads to the granting of the breeder's right or to the entry of such variety in such official register, as the case may be;

(c) uniform, if it is sufficiently uniform in its essential characteristics subject to the variation that may be expected from the particular features of its propagation;

(d) stable, if its essential characteristics remain unchanged after repeated propagation or, in the case a particular cycle of propagation, at the end of each such cycle.

(4) A new variety shall not be registered under this Act if the denomination given to such variety—

(i) is not capable of identifying such variety; or

(ii) consists solely of figures; or

(iii) is liable to mislead or to cause confusion concerning the characteristics, value or identity of such variety or the identity of breeder of such variety; or

(iv) is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or

(v) is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or

(vi) is comprised of any matter likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or

(vii) is comprised of scandalous or obscene matter; or

(viii) is prohibited for use as a name or emblem for any of the purposes mentioned in section 3 of the Emblems and Names (Protection of Improper Use) Act, 1950; or

12 of 1950.

(ix) is comprised of solely or partly of geographical name:

Provided that the Registrar may register a variety, the denomination of which comprises solely or partly of a geographical name, if he considers that the use of such denomination in respect of such variety is an honest use under the circumstances of the case.

CHAPTER V

APPLICATION FOR REGISTRATION

Persons who
may make
application.

15. (1) An application for registration under section 13 shall be made by—

- (a) any person claiming to be the breeder of the variety; or
- (b) any successor of the breeder of the variety; or
- (c) any person being the assignee of the breeder of the variety in respect of the right to make such application; or
- (d) any person authorised in the prescribed manner by a person specified under clauses (a) to (c) to make application on his behalf.

(2) An application under sub-section (1) may be made by any of the persons referred to therein individually or jointly with any other person.

Compulsory
plant variety
denomination.

16. (1) Every applicant shall assign a single and distinct denomination to a variety with respect to which he is seeking registration under this Act in accordance with the regulations.

(2) The Authority shall, having regard to the provisions of any international convention or treaty to which India has become a party, make regulations governing the assignment of denomination to a plant variety.

(3) Where the denomination assigned to the variety do not satisfy the requirements specified in the regulations, the Registrar may require the applicant to propose another denomination within such time as may be provided by such regulations.

(4) Every applicant shall cause the variety to which he is making the application under section 13, to be catalogued by such institution or centre as may be notified by the Central Government in the Official Gazette.

(5) Notwithstanding anything contained in the Trade and Merchandise Marks Act, 1958, a denomination assigned to a variety shall not be registered as a trade mark under that Act.

43 of 1958.

Form of
application.

17. (1) Every application for registration under section 13 shall—

- (a) be with respect to a variety;
- (b) state the denomination assigned to such variety by the applicant;
- (c) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;
- (d) be in such form as may be prescribed;
- (e) contain a complete passport data of the parent lines from which the variety has been derived;
- (f) be accompanied by a statement containing the catalogue number and brief description of variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration;

- (g) be accompanied by such fees as may be prescribed; and
- (h) be accompanied by such other particulars as may be prescribed.

(2) Every application referred to in sub-section (1) shall be filed in the office of the Registrar.

(3) Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application.

18. (1) Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantities of seeds of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether seeds of such variety along with parental material conform to the standards as may be specified by regulations.

Tests to be conducted.

(2) The applicant shall deposit such fee as may be prescribed for conducting tests referred to in sub-section (1).

(3) The tests under sub-section (1) shall be conducted in such manner and by such method as may be prescribed.

19. (1) On receipt of an application under section 13, the Registrar may, after making such inquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he deems fit.

Acceptance of application or amendment thereof.

(2) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules or regulations made thereunder, he may, either—

- (a) require the applicant to amend the application to his satisfaction; or
- (b) reject the application;

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case.

20. (1) Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (1) of section 19, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter.

Advertisement of application.

(2) Any person may, within three months from the date of the advertisement of an application for registration or within such further period not exceeding thirty days in the aggregate as the Registrar on application made to him in the prescribed manner and on payment of the prescribed fee allows, give notice, in writing in the prescribed manner, to the Registrar, of his opposition to the registration.

(3) Opposition to the registration under sub-section (2) may be made on the following grounds, namely:—

- (a) that the person opposing the application is entitled to the breeder's right as against the applicant; or
- (b) that the variety is not registrable under this Act; or
- (c) that the grant of certificate of registration may not be in public interest.

(4) The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such counter statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(6) Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.

(7) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.

(8) Where a person giving notice of opposition or an applicant sending a counter statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the cost of proceedings before him and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.

(9) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter statement on such terms as he may think fit.

Registrar to consider grounds of opposition.

21. The Registrar shall consider all the grounds on which the application has been opposed and after giving reasons for his decision, by order, uphold or reject the opposition.

CHAPTER VI

REGISTRATION OF ESSENTIALLY DERIVED VARIETY

Registration of essentially derived variety.

22. (1) Notwithstanding anything contained in Chapters IV and V, registration of essentially derived variety of the genera or species specified under sub-section (2) of section 29 shall be done in accordance with the provisions of this Chapter.

(2) An application for the registration of an essentially derived variety of the genera or species specified under sub-section (2) of section 29 by the Central Government shall be made to the Registrar by or on behalf of any person referred to and in the manner specified in, section 13 as if for the word "variety", the words "essentially derived variety" have been substituted therein and shall be accompanied by such documents and fee as may be prescribed.

(3) When the Registrar is satisfied that the requirements of sub-section (1) have been complied with to his satisfaction, he shall forward the application with his report and all the relevant documents to the Authority.

(4) On receipt of an application under sub-section (3), the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.

(5) When the Authority is satisfied on the report of test referred to in sub-section (4) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.

(6) Where the Authority is not satisfied on the report of test referred to in sub-section (4) that the essentially derived variety has been derived from the initial variety it shall refuse the application.

(7) The rights of breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety:

Provided that the authorisation by the breeder of initial variety to the breeder of essentially derived variety may be subject to such terms and conditions as both the parties may mutually agree upon.

(8) An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 14 as if for the word "variety", the words "essentially derived variety" have been substituted therein.

(9) When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority under sub-section (5), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with seal of the Registry and send a copy thereof to the Authority for determination of benefit sharing and to such other authority, as may be prescribed, for information.

CHAPTER VII

POWER OF AUTHORITY AND DURATION AND EFFECT OF REGISTRATION

23. In all proceedings under this Act before the Authority or the Registrar—

Powers of
Authority and
Registrar.

(a) the Authority or the Registrar, as the case may be, shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Authority or the Registrar may, subject to any rules made in this behalf under this Act, make such orders as to cost as it considers reasonable and any such order shall be executable as a decree of a civil court.

24. (1) When an application for registration of a variety (other than an essentially derived variety), has been accepted and either—

Issue of
certificate of
registration.

(a) the application has not been opposed and the time of notice of opposition has expired; or

(b) the application has been opposed and the opposition has been rejected, the Registrar shall register the variety.

(2) On the registration of the variety (other than an essentially derived variety), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy to the Authority for determination of benefit sharing and to such other authority, as may be prescribed, for information.

(3) Where registration of a variety (other than an essentially derived variety), is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may after giving notice to the applicant in the prescribed manner treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the Register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

(5) The Registrar shall have power to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application.

(6) The certificate of registration issued under this section or sub-section (9) of section 22 shall be valid for three years and may be renewed or further renewed, as the case may be, for a like period on payment of such fee as may be fixed by the rules made in this behalf subject to the condition that the total aggregate period of validity shall not exceed—

(i) in the case of trees and vines, eighteen years from the date of registration of variety;

(ii) in the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under the Seeds Act, 1966; and

54 of 1966.

(iii) in the other cases, fifteen years from the date of registration of variety.

Publication of
list of varieties.

25. The Authority shall, within such intervals as it thinks appropriate, publish the list of varieties which have been registered during that interval.

Determination
of benefit
sharing by
Authority.

26. (1) On receipt of copy of the certificate of registration under sub-section (9) of section 22 or sub-section (2) of section 24, the Authority shall publish such contents of the certificate and invite the claims of the benefit sharing to the variety registered under such certificate in the manner as may be prescribed.

(2) On invitation of the claims under sub-section (1), any person or group of persons or non-governmental organisation shall submit its claim of benefit sharing to such variety in the prescribed form in duplicate within such period, and accompanied with such fee, as may be prescribed.

(3) On receiving a claim under sub-section (2), the Authority shall send a copy of such claims to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as may be prescribed.

(4) The Authority shall, after giving an opportunity of being heard to the parties, dispose of the claim received under sub-section (2).

(5) While disposing of the claim under sub-section (4), the Authority shall explicitly indicate in its order the amount of the benefit sharing, if any, for which the claimant shall be entitled and shall take into consideration the following matters, namely:—

(a) the extant and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed;

(b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.

(6) The amount of benefit sharing to a variety determined under this section shall be deposited by the breeder of such variety in the manner referred to under clause (a) of sub-section (1) of section 52 in the Gene Fund.

(7) The amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides.

Breeder to
deposit seeds
or propagating
material.

27. The Authority may by order direct any breeder to deposit such quantity of seeds or propagating material including parental line seeds as may be specified in the regulations for reproduction purposes at the breeder's expense within such time as may be specified in that order.

28. (1) Subject to the other provisions of this Act, a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety:

Registration to confer right.

54 of 1966.

Provided that in the case of an extant variety, unless a breeder or his successor establishes his right, the Central Government, and in cases where such extant variety is notified for a State or for any area thereof under section 5 of the Seeds Act, 1966 the State Government, shall be deemed to be the owner of such right.

(2) A breeder may authorise any person to produce, sell, market or otherwise deal with the variety registered under this Act subject to such limitations and conditions as may be specified in the regulations.

(3) Every authorisation under this section shall be in such form as may be specified by regulations.

(4) Where an agent or a licensee referred to in sub-section (1) becomes entitled to produce, sell, market, distribute, import or export a variety, he shall apply in the prescribed manner and with the prescribed fee to the Registrar to register his title and the Registrar shall on receipt of application and on proof of title to his satisfaction, register him as an agent or a licensee, as the case may be, in respect of the variety for which he is entitled for such right, and shall cause particulars of such entitlement and conditions or restrictions, if any, subject to which such entitlement is made, to be entered in the register:

Provided that when the validity of such entitlement is in dispute between the parties, the Registrar may refuse to register the entitlement and refer the matter in the prescribed manner to the Authority and withhold the registration of such entitlement until the right of parties in dispute so referred to has been determined by the Authority.

(5) The Registrar shall issue a certificate of registration under sub-section (4) to the applicant after such registration and shall enter in the certificate the brief conditions of entitlement, if any, in the prescribed manner, and such certificate shall be the conclusive proof of such entitlement and the conditions or restriction thereof, if any, except when the validity of such registration is challenged.

(6) Subject to any agreement subsisting between the parties, an agent or licensee of a right to a variety registered under sub-section (4) shall be entitled to call upon the breeder or his successor thereof to take proceedings to prevent infringement thereof, and if the breeder or his successor refuses or neglects to do so within three months after being so called upon, such registered agent or licensee may institute proceedings for infringement in his own name as if he were the breeder making the breeder or his successor a defendant.

(7) Notwithstanding anything contained in any other law, a breeder or his successor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(8) Nothing in this section shall confer on a registered agent or registered licensee of a variety any right to transfer such right further thereof.

(9) Without prejudice to the registration under sub-section (4), the terms of registration—

(a) may be varied by the Registrar as regards the variety in respect of which, or any condition or restrictions subject to which, it has effect on receipt of an application in the prescribed manner of the registered breeder of such variety, or his successors;

(b) may be cancelled by the Registrar on the application in the prescribed manner of the registered breeder of such variety or his successor or of the registered agent or registered licensee of such variety;

(c) may be cancelled by the Registrar on the application in the prescribed manner of any person other than the breeder, his successor, the registered agent or the registered licensee on any of the following grounds, namely:—

(i) that the breeder of a variety or his successor or the registered agent or registered licensee of such variety, misrepresented, or failed to disclose, some fact material to the application for registration under sub-section (4) which if accurately represented or disclosed would have justified the refusal of the application for registration of the registered agent or registered licensee;

(ii) that the registration ought not to have been effected having regard to the right vested in the applicant by virtue of a contract in the performance of which he is interested;

(d) may be cancelled by the Registrar on the application in the prescribed manner of the breeder of a registered variety, or his successor on the ground that any stipulation in the agreement between the registered agent or the registered licensee, as the case may be, and such breeder or his successor regarding the variety for which such agent or licensee is registered is not being enforced or is not being complied with;

(e) may be cancelled by the Registrar on the application of any person in the prescribed manner on the ground that the variety relating to the registration is no longer existing.

(10) The Registrar shall issue notice in the prescribed manner of every application under this section to the registered breeder of a variety or his successor and to each registered agent or registered licensee (not being the applicant) of such variety.

(11) The Registrar shall before making any order under sub-section (9) forward the application made in that behalf along with any objection received by any party after notice under sub-section (10) for the consideration of the Authority, and the Authority may, after making such enquiry as it thinks fit, issue such directions to the Registrar as it thinks fit and the Registrar shall dispose of the application in accordance with such directions.

Exclusion of
certain
varieties.

29. (1) Notwithstanding anything contained in this Act, no registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.

(2) The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties under this Act.

(3) The Central Government shall not exclude any genus or species from the list of genera or species specified in a notification issued under sub-section (2) except in public interest.

(4) Any variety belonging to the genera or species excluded under sub-section (3) shall not be eligible for any protection under this Act.

(5) Any variety belonging to the genera or species excluded under sub-section (3) which has been protected under this Act before such exclusion shall continue to avail such protection irrespective of the exclusion.

Researcher's
rights.

30. Nothing contained in this Act shall prevent—

(a) the use of any variety registered under this Act by any person using such variety for conducting experiment or research; and

(b) the use of a variety by any person as an initial source of variety for the purpose of creating other varieties:

Provided that the authorisation of the breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

31. Nothing contained in this Act shall affect the right of a farmer to save, use, exchange, share or sell his farm produce of a variety protected under this Act: Farmer's right.

Provided that a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a commercial marketing arrangement.

32. (1) With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to citizens of India similar privileges as granted to its own citizen, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act. Special provisions relating to applications for registration from citizens of convention countries.

(2) Where a person has made an application for the granting of a breeder's right to a variety or for entering such variety in the official register of varieties in a convention country and that person or any person entitled to make application on his behalf under section 13 or section 22 makes an application for the registration of such variety in India within twelve months after the date on which the application was made in the convention country, such variety shall, if registered under this Act, be registered as of the date on which the application was made in the convention country and that date shall be deemed for the purposes of this Act to be the date of registration.

(3) Where applications have been made for granting of a breeder's right to a variety or for entering such variety in the official register of varieties in two or more convention countries, the period of twelve months referred to in the last preceding sub-section shall be reckoned from the date on which the earlier or earliest of those applications was made.

(4) Nothing in this Act shall entitle the breeder of a registered variety for infringement of rights other than protected under this Act which took place prior to the date of application of registration under this Act.

33. Where any country specified by the Central Government in this behalf by notification in the Official Gazette under sub-section (1) of section 32 does not accord to citizens of India the same rights in respect of the registration and protection of a variety as it accords to its own nationals, no nationals of such country shall be entitled, either solely or jointly with any other person, to apply for the registration of a variety or be entitled to get a variety registered under this Act. Provision as to reciprocity.

34. Save as otherwise provided in this Act, no person shall—

- (a) produce or cause to be produced;
 - (b) sell or offer to sell or cause to be sold or cause to be offered to be sold;
 - (c) market or cause to be marketed;
 - (d) export or cause to be exported;
 - (e) import or cause to be imported;
- Prohibition from production, sale, etc., of plant variety.

any variety registered under this Act unless he has obtained authorisation as an agent or licensee from the registered breeder of such variety and has been registered as such under this Act.

CHAPTER VIII

SURRENDER AND REVOCATION OF CERTIFICATE

35. (1) A breeder of a variety registered under this Act may, at any time by giving notice in the prescribed manner to the Registrar, offer to surrender his certificate of registration. Surrender of certificate of registration.

(2) Where such an offer is made, the Registrar shall notify in the prescribed manner every registered agent or registered licensee relating to such certificate.

(3) Any of such agent or licensee may, within the prescribed period after such notification give notice to the Registrar of his opposition to the surrender and where any such notice is given, the Registrar shall intimate the contents of such notice to the breeder of such variety.

(4) If the Registrar is satisfied after hearing the applicant and all the opponents, if desirous of being heard, that the certificate of registration may properly be surrendered, he may accept the offer and by order revoke the certificate of registration.

Revocation of
protection on
certain
grounds.

36. Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely:—

(a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;

(b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;

(c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;

(d) that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the registration to the Registrar having jurisdiction in case where the earlier denomination of such variety provided to the Registrar is not permissible for registration under this Act;

(e) that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 41 regarding the variety in respect of which registration certificate has been issued to such breeder;

(f) that the breeder has not complied with the provisions of this Act or provisions of rules or regulations made thereunder;

(g) that the breeder has failed to provide the passport data of the parent lines from which the variety, in respect of which registration certificate has been issued to such breeder, is derived;

(h) that the breeder has failed to comply with the directions of the Authority issued under this Act;

(i) that the grant of the certificate of registration is not in the public interest:

Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file objection and of being heard in the matter.

Payment of
annual fee and
forfeiture of
registration in
default thereof.

37. (1) The Authority may, with the prior approval of the Central Government and after notification in the Official Gazette, impose a fee by way of royalty to be paid annually by every breeder of a variety agent and licensee registered under this Act for the retention of their registration under this Act.

(2) If any breeder, agent or licensee fails to deposit the fee referred to in sub-section (1) imposed upon him under that sub-section in the prescribed manner up to two consecutive years, the Authority shall issue notice to such breeder, agent or licensee and on service of such notice if he fails to comply with the direction in the notice, the Authority shall declare all the protection admissible under registration certificate issued to such breeder or agent or licensee forfeited.

(3) The arrears of fee imposed under sub-section (1) shall be deemed to be the arrears of land revenue and shall be recoverable accordingly.

CHAPTER IX

RECTIFICATION AND CORRECTION OF REGISTER

38. (1) On an application made in the prescribed manner to the Registrar by any person aggrieved, the Registrar may make such order as he may think fit for cancelling or changing any certificate of registration issued under this Act on the ground of any contravention of the provisions of this Act or failure to observe a condition subject to which such registration certificate is issued.

Power to cancel or change registration and to rectify the Register.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, may apply in the prescribed manner to the Registrar having jurisdiction and the Registrar may make such order for making, expunging or varying the entry as he may think fit.

(3) The Registrar may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The Registrar, on his own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

39. (1) The Registrar may, on an application in the prescribed manner by the breeder of a variety registered under this Act,—

Correction of Register.

(a) correct any error in the register in the name, address or description of such breeder or any other entry relating to such variety;

(b) enter in the register any change in the name, address or description of such breeder;

(c) cancel the entry in the register of the variety in respect of which such application is made; and may make any consequential amendment or alteration in the certificate of registration and for that purpose require the certificate of registration to be produced to him.

(2) The Registrar may, on application made in the prescribed manner by a registered agent or a registered licensee of a variety and after notice to the registered breeder of such variety, correct any error, or enter any change, in the name, address or description of such registered agent or registered licensee, as the case may be, in the register or certificate of registration issued under this Act.

40. (1) The breeder of a variety registered under this Act may apply in the prescribed manner to the Registrar to delete any part or to add to or alter the denomination of such variety in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit to avoid any conflict with the rights of other breeders of the varieties registered under this Act.

Alteration of denomination of a registered variety.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the denomination of the variety as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

CHAPTER X

COMPULSORY LICENCE

Power of Authority to make order for compulsory licence in certain circumstances.

41. (1) At any time, after the expiry of three years for the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seeds or other propagating material of the variety have not been satisfied or that the seed of other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seed or other propagating material of that variety.

(2) Every application under sub-section (1) shall contain a statement of the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(3) The Authority, if satisfied after giving an opportunity to the breeder of such variety, to file opposition and after hearing the parties, on the issue that the reasonable requirements of the public with respect to the variety have not been satisfied or that the variety is not available to the public at a reasonable price, may order such breeder to grant a licence to the applicant upon such terms and conditions as it may deem fit and send a copy of such order to the Registrar to register such licence under sub-section (4) of section 28 on payment of such fee by the applicant as is referred to in that sub-section.

When requirement of public deemed to have not been satisfied.

42. In determining the question as to whether the reasonable requirements of the public for seeds of a variety or its propagating material as referred to in sub-section (1) or sub-section (3) of section 41, the Authority shall take into account—

(i) the nature of the variety, the time which has elapsed since the grant of the certificate of registration of the variety and the measures taken by the breeder or any registered licensee of the variety to meet the requirement of the public; and

(ii) the capacity, ability and technical competence of the applicant to produce and market the variety to meet the requirement of the public.

Adjournment of application for grant of compulsory licence.

43. (1) If the breeder of a variety registered under this Act in respect of which any application has been pending before the Authority under section 41 makes a written request to the Authority on the ground that due to any reasonable factor, such breeder has been unable to produce seed or other propagating material of the variety on a commercial scale to an adequate extent till the date of making such request, the Authority may on being satisfied that the said ground is reasonable, adjourn the hearing of such application for such period not exceeding twelve months in aggregate as it may consider sufficient for optimum production of the seed or propagating material of such variety or essentially derived variety, as the case may be, by such breeder.

(2) No adjournment of the application under sub-section (1) shall be granted unless the Authority is satisfied that the breeder of the variety registered under this Act in respect of which such application is made has taken immediate measures to meet the reasonable requirements of the public for the seeds or other propagating material of such variety.

Duration of compulsory licence.

44. The Authority shall determine the duration of the compulsory licences granted under this Chapter and such duration may vary from case to case keeping in view the gestation periods and other relevant factors and when a compulsory licence is granted the prescribed authority shall in the prescribed manner make available to the licensee of such compulsory licence, the reproductive material of the variety relating to such compulsory licence stored in the National Gene Bank or any other centre.

Authority to settle terms and conditions of licence.

45. (1) The Authority shall, while determining the terms and conditions of a compulsory licence under the provisions of this Chapter, endeavour to secure—

(i) reasonable royalty and other remuneration to the breeder of the variety relating to the compulsory licence having regard to the nature of the variety, the expenditure incurred by such breeder in breeding the variety or for developing it and other relevant factors;

(ii) that the compulsory licensee of such variety possesses the adequate means to provide to the farmers, the seeds or its other propagating material of such variety timely and at reasonable market price.

(2) No compulsory licence granted by the Authority shall authorise the licensee to import the variety relating to such licence or any seed or other propagating material of such variety from abroad where such import would constitute an infringement of the rights of the breeder of such variety.

46. (1) The Authority may on its own motion or on application from an aggrieved person made to it in the prescribed form, if it is satisfied that a compulsory licensee registered under this Chapter has violated any terms or conditions of his licence or it is not appropriate to continue further such licence in public interest, it may after giving such licensee an opportunity to file opposition and of being heard make order to revoke such licence.

Revocation of compulsory licence.

(2) When a licence is revoked under sub-section (1) by an order of the Authority, the Authority shall send a copy of such order to the Registrar having jurisdiction to rectify the entry or correct the register relating to such revocation and the Registrar shall rectify the entry or correct the register accordingly.

47. The Authority may on its own motion or on application from the licensee of a compulsory licence, after providing the opportunity of being heard to the breeder of the variety registered under this Act relating to such compulsory licence, if it considers, in public interest, so to do, modify, by order, such terms and conditions as it thinks fit and send a copy of such order to the Registrar having jurisdiction to correct the entries and register according to such modifications and the Registrar shall ensure such corrections to be made accordingly.

Modification of compulsory licence.

48. (1) Any person, group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may on behalf of any village or local community, file in any centre notified in the Official Gazette by the Authority in this behalf with the previous approval of the Central Government, any claim attributable to the contribution of the people of that village or local community in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.

Rights of communities.

(2) Where any claim is made under sub-section (1), the centre notified under that sub-section may verify the claim made by such person or group of persons of such village or local community or such governmental or non-governmental organisation in such manner as it deems fit and if it is satisfied that such village or local community has contributed significantly to the evolution of the variety which has been registered under this Act, it shall report its findings to the Authority.

(3) When the Authority, on a report under sub-section (2) is satisfied, after such enquiry as it may deem fit, that the variety with which the report is related has been registered under the provisions of this Act, it may issue notice in the prescribed manner to the breeder of that variety and after providing opportunity to such breeder to file objection in the prescribed manner and of being heard, it may subject to any limit notified by the Central Government, by order, grant such sum of compensation to be paid to a person or group of persons or governmental or non-governmental organisation which has made report to the Authority, as it may deem fit.

(4) Any compensation granted under sub-section (3) shall be deposited by the breeder of the variety in the Gene Fund.

(5) The compensation referred to in sub-section (3) shall be deemed to be an arrear of land revenue and shall be recoverable by the Authority accordingly.

49. (1) The Central Government shall, for the purposes of section 48 and clause (d) of sub-section (1) of section 52 frame, by notification in the Official Gazette, one or more schemes.

Framing of scheme, etc.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the scheme may provide for all or any of the following matters, namely:—

- (a) the registration of the claims for the purposes of section 48 under the scheme and all matters connected with such registration;
- (b) the processing of such claims for securing their enforcement and matters connected therewith;
- (c) the maintenance of records and registers in respect of such claims;
- (d) the utilisation, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of such claims;
- (e) the procedure for disbursal or apportionment by the Authority in the event of dispute regarding such claims;
- (f) the utilisation of benefit sharing for the purposes relating to breeding, discovery or development of varieties;
- (g) the maintenance and audit of accounts with respect to the amounts referred to in clause (d).

CHAPTER XI

APPEALS

Appeals.

50. (1) An appeal shall be preferred to the High Court within the prescribed period from any—

- (a) order or decision of the Authority or Registrar relating to registration of a variety; or
- (b) registration as an agent of a variety; or
- (c) granting of compulsory licence, or registration of compulsory licensee, of a variety; or
- (d) determining the benefit sharing by the Authority;
- (e) order or decision of the Central Government regarding revocation of compulsory licence or modification of compulsory licence; or
- (f) order or decision of Authority regarding payment of compensation, made under this Act or the rules made thereunder.

(2) Every such appeal shall be preferred by petition in writing and shall be in such form and shall contain such particulars as may be specified by rules made under section 51.

(3) Every such appeal shall be heard by a single Judge of the High Court:

Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceeding to a Bench of the High Court.

(4) Where an appeal is heard by a single Judge, a further appeal shall lie to a Bench of the High Court.

(5) The High Court in disposing of an appeal under this section shall have the power to make any order which the Authority or the Registrar could make under this Act.

(6) Subject to the provisions of this Act and the rules made thereunder, the provisions of the Code of Civil Procedure, 1908, shall apply to appeals before a High Court under this Act.

5 of 1908.

Power of High Court to make rules.

51. The High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

CHAPTER XII

NATIONAL GENE FUND

52. (1) The Central Government shall constitute a Fund to be called the National Gene Fund and there shall be credited thereto—

(a) the benefit sharing received in the prescribed manner from the breeder of a variety or an essentially derived variety registered under this Act or propagating material of such variety or essentially derived variety, as the case may be;

(b) the annual fee payable to the Authority by way of royalty under sub-section (1) of section 37;

(c) the compensation deposited in the Gene Fund under sub-section (4) of section 48;

(d) the contribution from any national and international organisation and other sources.

(2) The Gene Fund shall be applied for meeting—

(a) any amount to be paid by way of benefit sharing under sub-section (5) of section 26;

(b) the compensation payable under sub-section (3) of section 48;

(c) the expenditure for supporting the conservation and sustainable use of genetic resources including in-situ and ex-situ collections;

(d) the other expenditures of the schemes relating to benefit sharing framed under section 49.

CHAPTER XIII

FINANCE, ACCOUNTS AND AUDIT

53. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants and loans of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Grants by
Central
Government.

54. (1) There shall be constituted a fund to be called the Protection of Plant Varieties Authority Account and there shall be credited thereto—

Authority
Fund.

(a) all grants and loans made to the Authority by the Central Government under section 53;

(b) all fees received by the Authority and the Registrars except the annual fee by way of royalty under sub-section (1) of section 37;

(c) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Protection of Plant Varieties Authority Account shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the Chairperson, officers and other employees of the Authority and allowances, if any, payable to the members;

(b) the other expenses of the Authority in connection with the discharge of its functions and for purposes of this Act.

55. (1) The Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the Gene Fund) and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Budget,
accounts and
audit.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same right and privileges and authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Financial and administrative powers of the Chairperson.

56. The Chairperson shall exercise such financial and administrative powers over the functions of the Authority as may be prescribed:

Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to a member or any other officer of the Authority subject to the condition that the member or such officer shall, while exercising such delegated powers, continue to be under the direction, control and supervision of the Chairperson.

CHAPTER XIV

INFRINGEMENT

Infringement.

57. Subject to the provisions of this Act, a right established under this Act is infringed by a person—

(a) who, not being the breeder of a variety registered under this Act or a registered agent or registered licensee of that variety, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered licence or registered agency without permission of the registered licensee or registered agent, as the case may be;

(b) who uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a variety registered under this Act in such manner as to cause confusion in the mind of general people in identifying such variety so registered.

Suit for infringement, etc.

58. (1) No suit—

(a) for the infringement of a variety registered under this Act; or

(b) relating to any right in a variety registered under this Act,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, includes a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or proceeding, the person instituting the suit or other proceeding, or, where there are more than one such person any of them actually and voluntarily resides or carries on business or personally works for gain.

5 of 1908.

Relief in suits for infringement.

59. (1) The relief which a court may grant in any suit for infringement referred to in section 58 includes an injunction and at the option of the plaintiff, either damages or a share of the profits.

(2) The order of injunction under sub-section (1) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:—

(a) for discovery of documents;

(b) preserving of infringing variety or documents or other evidence which are related to the subject matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a matter which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

60. (1) When the court has to form an opinion upon any question of fact or a scientific issue, such court may appoint an independent scientific adviser to suggest it or to enquire and report upon the matter to enable it to form the desired opinion.

Opinion of
scientific
adviser.

(2) The scientific adviser may be paid such remuneration of expenses as the court may fix.

CHAPTER XV

OFFENCES, PENALTIES AND PROCEDURE

61. (1) No person other than the breeder of a variety registered under this Act or a registered licensee or registered agent thereof shall use the denomination of that variety in the manner as may be prescribed.

Prohibition to
apply the
denomination
of a registered
variety.

(2) A person shall be deemed to apply the denomination of a variety registered under this Act who—

(a) applies it to the variety itself; or

(b) applies it to any package in or with which the variety is sold, or exposed for sale, or had in possession such package for sale or for any purpose of trade or production; or

(c) places, encloses or annexes the variety which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or production, in or with any package or other thing to which the denomination of such variety registered under this Act has been applied; or

(d) uses the denomination of such variety registered under this Act in any manner reasonably likely to lead to the belief that the variety or its propagating material in connection with which it is used is designated or described by that denomination; or

(e) in relation to the variety or uses such denomination in any advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and such variety is delivered to a person in pursuance of a request or order made by reference to the denomination as so used.

(3) A denomination shall be deemed to be applied to a variety whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, such variety or to any package or other thing.

62. (1) A person shall be deemed to falsely apply the denomination of a variety registered under this Act who, without the assent of the breeder of such variety,—

Meaning of
falsely
applying the
denomination
of a registered
variety.

(a) applies such denomination or a deceptively similar denomination to any variety or any package containing such variety.

(b) uses any package bearing a denomination which is identical with or deceptively similar to the denomination of such variety registered under this Act, for the purpose of packing, filling or wrapping therein any variety other than such variety registered under this Act.

(2) Any denomination of a variety registered under this Act falsely applied as mentioned in sub-section (1), is in this Act referred to as false denomination.

(3) In any prosecution for falsely applying a denomination of a variety registered under this Act, the burden of proving the assent of the breeder of such variety shall lie on the accused.

Penalty for
applying false
denomination,
etc.

63. (1) Any person who—

(a) applies any false denomination to a variety; or

(b) indicates the false name of a country or place or false name and address of the breeder of a variety registered under this Act in course of trading such variety,

shall unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to ten lakh rupees.

Penalty for
selling
varieties to
which false
denomination
is applied, etc.

64. Any person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or production any variety to which any false denomination is applied or to which an indication of the country or place in which such variety was made or produced or the name and address of the breeder of such variety registered under this Act has been falsely made, shall unless he proves—

(a) that having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the denomination of such variety or that any offence had been committed in respect of indication of the country or place in which such variety registered under this Act, was made or produced or the name and address of the breeder of such variety,

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such variety; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to ten lakh rupees.

Penalty for
falsely
representing a
variety as
registered.

65. Whoever makes any representation with respect to the denomination of a variety or its propagating material or essentially derived variety or its propagating material not being variety or its propagating material or essentially derived variety or its propagating material registered under this Act to the effect that it is a variety or its propagating material or essentially derived variety or its propagating material registered under this Act or otherwise represents any variety, or its propagating material or essentially derived variety or its propagating material not registered under this Act to the effect that it is registered under this Act shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

Penalty for
subsequent
offence.

66. Whoever, having already been convicted of an offence under this Act is again convicted of such offence shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty lakh rupees.

No offence in
certain cases.

67. The provisions of this Act relating to offences shall be subject to the right created as recognised by this Act and no act or omission shall be deemed to be an offence under the provisions of this Act if such act or omission is permissible under this Act.

68. Where a person accused of an offence under this Act proves that in the ordinary course of his employment, he has acted without any intention to commit the offence and having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the act so charged as an offence and on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the offence was committed, he shall be acquitted.

Exemption of certain persons employed in ordinary course of business.

69. (1) Where the offence charged under this Act is in relation to a variety or its propagating material or essentially derived variety or its propagating material registered under this Act and the accused pleads that the registration of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, is invalid and the court is satisfied that such offence is *prima facie* not tenable, it shall not proceed with the charge but shall adjourn the proceedings for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Registrar under this Act for the rectification of the register on the ground that the registration is invalid.

Procedure where invalidity of registration is pleaded by the accused.

(2) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

(3) If within a period of three months or within such extended time as may be allowed by the court, the accused fails to apply to the Registrar for rectification of the register, the court shall proceed with the case as if the registration were invalid.

(4) Where before institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the register concerning the registration of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, in question on the ground of invalidity of such registration has already been properly made to and is pending before the Registrar, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification.

70. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER XVI

MISCELLANEOUS

71. Notwithstanding anything contained in this Act, the Authority or the Registrar shall—

(a) not disclose any information relating to the registration of a variety or any application relating to the registration of a variety under this Act, which it considers prejudicial to the interest of the security of India; and

Protection of security of India.

(b) take any action regarding the cancellation of registration of such varieties registered under this Act which the Central Government may by notification in the Official Gazette specify in the interest of the security of India.

Explanation.—For the purpose of this section, the expression "security of India" means any action necessary for the security of India which relates to the use of any produce of any variety registered under this Act directly or indirectly for the purposes of war or military establishment or for the purposes of war or other emergency in international relations.

Implied
warranty on
sale of
registered
variety, etc.

72. Where a denomination of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act has been applied to the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on sale or in the contract for sale of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, the seller shall be deemed to warrant that the denomination is a genuine denomination and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on contract to and accepted by the buyer.

Death of
party to a
proceeding.

73. If a person who is a party to a proceeding under this Act (not being a proceeding in a court) dies pending the proceeding, the Authority or the Registrar, having jurisdiction, as the case may be, may, on request, and on proof to the satisfaction of such Authority or Registrar, of the transmission of the interest of the deceased person, substitute in the proceedings his successor in interest in his place, or, if the Authority or the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving party, permit the proceedings to continue without the substitution of his successor in interest.

Right of
registered
agent and the
registered
licensee to
institute suit.

74. The registered agent or the registered licensee of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act may institute appropriate proceedings in the court under this Act on behalf of the breeder of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, if such agent or licensee has been authorised in the prescribed manner by such breeder for doing so.

Evidence of
entry in
register, etc.,
and things
done by the
Authority and
the Registrar.

75. (1) A copy of any entry in the register, or of any document issued under this Act purporting to be certified by the Authority or the Registrar and sealed with the seal of such Registrar or the Authority, as the case may be, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

(2) A certificate purporting to be under the hand of the Authority or the Registrar, as the case may be, as to any entry, matter or things that such Authority or the Registrar is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the content thereof, or of the matter or things having been done or not done.

Authority
and registrar
and other
officers not
compellable
to production
of register, etc.

76. The Authority or the Registrar or any officer working under the Authority or the Registrar, as the case may be, shall not, in any legal proceedings be compelled to produce the register or any other document in its or his custody, the content of which can be proved by the production of a certified copy issued under this Act in the prescribed manner or to appear as a witness to prove the matters therein recorded unless by order of the court, as the case may be, made for special case.

77. Any person may, on an application to the Authority or the Registrar, as the case may be, and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

Document open to public inspection.

78. The Central Government shall cause to be placed before both Houses of Parliament once a year a report regarding the performance of the Authority under this Act.

Report of the Authority and the registrar to be placed before Parliament.

79. The provisions of this Act shall be binding on the Government.

Government to be bound.

80. All proceedings before the Authority or the Registrar, as the case may be, relating to registration of variety or essentially derived variety, registration of agent, registration of licence or registration of compulsory licensing under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code and the Authority or the Registrar, as the case may be, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Proceedings before Authority.

45 of 1860.

2 of 1974.

81. No suit, prosecution or other legal proceedings shall lie against the Central Government, or against the Chairperson, or members, or the Registrar or any person acting under such Government, Authority or Registrar under the provisions of this Act, for anything which is done in good faith or intended to be done in pursuance of this Act or any rule, regulation, scheme or order made thereunder.

Protection of action taken in good faith.

82. No civil court shall have jurisdiction in respect of any matter which the Authority or the Registrar is empowered by or under this Act to determine.

Bar of jurisdiction.

83. The Chairperson, members and the officers and other employees of such Authority and the Registrar-General and the officers and other employees working under him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Member and staff of Authority, etc., to be public servants.

45 of 1860.

27 of 1957.

43 of 1961.

84. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth tax, income tax or any other tax in respect of their wealth, income, profits or gains derived.

Exemption from tax on wealth and income.

85. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

86. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid before each House of Parliament.

Power to make regulations.

87. (1) The Authority may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) duties and jurisdiction of Registrars under sub-section (4) of section 11;

(b) the term of office and the conditions of service of the Registrars under sub-section (5) of section 11;

(c) the manner in which a single and distinct denomination to a variety shall be assigned by the applicant under sub-section (1) of section 16;

(d) matters governing the assignment of denomination of variety under sub-section (2) of section 16;

(e) the time within which the Registrar may require the applicant to propose another denomination under sub-section (3) of section 16;

(f) the standards for evaluating seeds during tests under sub-section (1) of section 18;

(g) to specify the quantity of seeds or other propagating material including parental line seeds to be deposited by a breeder under section 27;

(h) the limitations and conditions subject to which a breeder may authorise a person to sell, market or otherwise deal with varieties under sub-section (2) of section 28;

(i) the form for authorisation under sub-section (3) of section 28;

Power of the Central Government to make rules.

88. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particulars, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(i) the term of office of the Chairperson and the manner of filling the post under sub-section (6) of section 3;

(ii) the salary and allowances of the Chairperson and his conditions of service in respect of leave, pension, provident fund and other matters under sub-section (7) of section 3;

(iii) the time and place of meetings of the Authority and the rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) under sub-section (1) of section 4;

(iv) the control and restriction regarding appointment of the officers and employees of the Authority and the method of such appointment, scale of pay and allowances and other conditions of service under section 6;

(v) the powers and duties of the Chairperson under section 7;

(vi) the terms and conditions subject to which and the manner in which the measures referred to in sub-section (1) of section 8 may provide for the

registration of extant or new varieties to the researchers and breeders under clause (a) of sub-section (2) of that section;

(vii) the manner for arranging production and sale of the seeds under clause (d) of sub-section (2) of section 8;

(viii) the salary and allowances of Registrar-General of Plant Varieties and the conditions of service in respect of his leave, pension, provident fund and other matter under sub-section (3) of section 11;

(ix) the matters to be included in the National Register of Plant Varieties under sub-section (1) of section 12;

(x) the manner of authorising a person under clause (d) of sub-section (1) of section 15;

(xi) the form of application under clause (d), the fee under clause (g) and the other particulars under clause (b) which shall accompany such application under sub-section (1) of section 17;

(xii) the period within which after making application a proof of the right to make the application is to be forwarded under sub-section (3) of section 17;

(xiii) the fee to be deposited by the applicant under sub-section (2) of section 18;

(xiv) the manner and method of conducting the tests referred to in sub-section (1), under sub-section (3) of section 18;

(xv) the manner of advertising specifications of variety for registration including its photograph or drawing under sub-section (1) of section 20;

(xvi) the manner of making application and the fee payable for allowing further period to give notice and the manner of giving notice under sub-section (2) of section 20;

(xvii) the manner of sending counter statement under sub-section (4) of section 20;

(xviii) the manner of submitting evidence and the time within which such evidence may be submitted under sub-section (6) of section 20;

(xix) the documents and the fee which shall accompany the application under sub-section (2) of section 22;

(xx) the tests to be conducted and the procedure to be followed under sub-section (4) of section 22;

(xxi) the form of a certificate of registration and the other authority to which a copy thereto shall be sent under sub-section (9) of section 22;

(xxii) the form of a certificate of registration and the other authority to which a copy thereto shall be sent under sub-section (2) of section 24;

(xxiii) the manner of giving notice to the applicant under sub-section (3) of section 24;

(xxiv) the contents of the certificate and the manner of publishing such contents and inviting claim of benefits sharing under sub-section (1) of section 26;

(xxv) the form for submitting claims of benefit sharing and the fee to be accompanied therewith under sub-section (2) of section 26;

(xxvi) the manner in which and the time within which opposition to claims shall be submitted under sub-section (3) of section 26;

(xxvii) the fee payable for renewal or further renewal of period of validity of certificate of registration under sub-section (6) of section 26;

(xxviii) the manner of making difference under sub-section (7) of section 26;

(xxix) the manner of making an application for registration for title and the fee to be accompanied therewith under sub-section (4) of section 28;

(xxx) the manner of referring the disputes regarding registration of entitlement to the Authority under the proviso to sub-section (4) of section 28;

(xxxi) the manner to enter into a certificate the brief conditions of entitlement under sub-section (5) of section 28;

(xxxii) the manner of making an application for varying the terms of registration under clause (a), of sub-section (9) of section 28;

(xxxiii) the manner of making an application by the registered breeder and certain other for cancellation of the terms of registration under clause (b), of sub-section (9) of section 28;

(xxxiv) the manner of application by any person other than the breeder, his succession, the registered agent or the registered licences for cancellation of terms of registration under clause (c) of section (9) of section 28;

(xxxv) the manner of application for cancellation of the terms of registration under clause (d) of sub-section (9) of section 28;

(xxxvi) the manner of application for cancellation of the terms of registration under clause (e) of sub-section (9) of section 28;

(xxxvii) the manner to issuing notice to the Registered breeder, etc., under sub-section (10) of section 28;

(xxxviii) the manner of giving notice to the Registrar under sub-section (1) of section 35;

(xxxix) the manner of notifying to the registered agent or registered licensee under sub-section (2) of section 35;

(xl) the period within which the registered agent and registered licensees shall give notice to the Registrar under sub-section (3) of section 35;

(xli) the manner of making applications under section 36;

(xlii) the manner of depositing fee payable under sub-section (2) of section 37;

(xliii) the manner of making applications under sub-section (1) of section 38;

(xliv) the manner of applying to the Registrar under sub-section (2) of section 38;

(xlv) the manner of giving notice under sub-section (4) of section 38;

- (xvii) the manner of application under sub-section (1) of section 39;
- (xviii) the manner of making application under sub-section (2) of section 39;
- (xix) the manner to apply to the Registrar under sub-section (1) of section 40;
- (xi) the manner of advertising applications and notice to the Registrar, and the time from the date of the advertisement within which a person may give such notice under sub-section (2) of section 40;
- (i) the manner of advertising the denomination of the variety under sub-section (3) of section 40;
- (ii) the particulars to be contained in the application under sub-section (2) of section 41;
- (iii) the authority who shall be making available compulsory licence and the manner of making available reproductive material of the for revocation of compulsory license variety under section 44;
- (iv) the form for making application under sub-section (1) of section 46;
- (v) the manner of issuing notice and filing objections under sub-section (3) of section 48;
- (vi) the period of limitation for filing of appeal to High Court under sub-section (1) of section 50;
- (vii) the manner of receiving benefit sharing under clause (a) of sub-section (1) of section 52;
- (viii) the form for preparing annual statement of accounts under sub-section (1) of section 55;
- (ix) the financial and administrative powers which the Chairperson shall exercise under section 56;
- (x) the manner of using the denomination of a variety under sub-section (1) of section 61;
- (xi) the manner of authorising registered agent or registered licensee under section 74;
- (xii) the manner of issuing certified copy of Register, etc., under section 76;
- (xiii) the fee payable for obtaining a certified copy of any entry in the Register, etc., under section 77;
- (xiv) any other matter which is to be, or may be, prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision, is, in the opinion of the Central Government, necessary for the proper implementation of this Act.

89. Every rule and every regulation and every scheme made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or scheme or both Houses agree that the rule or regulation or scheme should not be made, the rule or regulation or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or scheme.

Rules,
regulations
and schemes
to be laid
before
Parliament.

STATEMENT OF OBJECTS AND REASONS

The concept of Plant Breeders' Rights arises from the need to provide incentives to plant breeders engaged in the creative work of research which sustains agricultural progress through returns on investments made in research and to persuade the researcher to share the benefits of his creativity with society.

2. The issue of enacting a law relating to Plant Varieties Protection and Farmers' Rights in India has become important particularly on India's signing of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) 1994. India ratified the WTO Agreement on the 30th December, 1994 and the agreement came into force with effect from the 1st January, 1995. The TRIPs Agreement seeks to promote effective protection of Intellectual Property Rights in all fields of technology. The members are free to determine the appropriate method of implementing the provisions of the agreement with their own legal system and practice. Article 27 of TRIPs Agreement defines patentable subject matter and requires, *inter-alia*, under Article 27.3(b) that members shall provide for the protection of plant varieties whether by patenting or by an effective *sui generis* system or by any combination thereof. As a developing country member, India has a period of 5 years from 1st January, 1995 within which to comply with the provisions of Article 27. 3(b) of TRIPs.

3. After careful consideration, the Ministry of Agriculture have taken a view that protection of plant varieties through a *sui generis* legislation would be the most appropriate way to comply with the provisions of the TRIPs Agreement.

4. Some of the advantages envisioned under the plant varieties protection system in India are detailed below:—

(i) by assuring a reasonable rate of return on a new plant variety when it finally reaches the market place, a system of plant breeders' rights encourages better and mission oriented research for development of varieties that are fully suited to a given agro-climatic regions;

(ii) India has developed commendable strength in agricultural research. Indian breeders working mainly in the public research system have developed a large number of new varieties. In the absence of plant breeders' rights, these varieties would be freely available to others for exploitation. New varieties developed on the basis of these varieties could get protected in other countries without any benefit accruing to Indian institutions/organisation, whereas, the availability of varieties developed in countries which provide for plant breeders' rights would be restricted in India. Therefore, putting a system of plant breeders' rights in action through law in India would provide protection to the public research system varieties developed by them. In future researchers' access to foreign germplasm may get linked to the provision of plant breeders' rights;

(iii) in the absence of plant breeders' rights, foreign companies would be hesitant to organise buy-back production of seeds in India for export to their countries for fear of unauthorised use of their genetic material;

(iv) a system of plant breeders' rights is also a useful adjunct to a legislative framework which is being formulated by the Ministry of Environment and Forests in accordance with the provisions of the Convention on Biological Diversity.

5. Keeping in view the above position, the Protection of Plant Varieties and Farmers' Rights Bill, 1999 proposes to achieve the following objectives:—

(i) to stimulate investments for research and development both in the public and the private sectors for the development of new plant varieties by ensuring appropriate returns on such investments;

(ii) to facilitate the growth of the seed industry in the country through domestic and foreign investment which will ensure the availability of high quality seeds and planting material to Indian farmers; and

(iii) to recognise the role of farmers as cultivators and conservors and the contribution of traditional, rural and tribal communities to the country's agro-biodiversity by rewarding them for their contribution through benefit sharing and protecting the traditional rights of the farmers.

6. While providing for an effective system of protection of plant breeders' rights, the proposed legislation seeks to safeguard farmers' and researchers' rights. It also contains provisions for safeguarding the larger public interest.

The farmer's rights include his traditional rights to save, use, share or sell his farm produce of a variety protected under this Act provided the sale is not for the purpose of reproduction under a commercial marketing arrangement.

7. The proposed legislation contains provisions to facilitate equitable sharing of benefits arising out of the use of plant genetic resources that may accrue to a breeder from the sale, disposal, etc., of seeds/planting material of a protected variety. The village and farming community will be compensated in case of their traditional or local varieties is used for the development of new varieties.

8. A National Gene Fund will be established to promote the conservation and sustainable use of genetic resources of agro-biodiversity.

9. The proposed legislation will extend to all categories of plants, but will not include micro-organisms. In order to be eligible for protection, a variety must be distinct, uniform and stable. The period of protection shall be eighteen years for trees and vines and fifteen years for other plants. Breeder's rights envisage that the breeder's authorisation will be required for production and commercial sale of the productive or propagating material of a protected variety.

10. The Protection of Plant Varieties and Farmer's Rights Authority will be established with the necessary powers to perform all functions relating to the protection of plant varieties. The duties and functions of the Authority, *inter-alia*, shall include:—

(i) to promote and develop new varieties of plants and to protect rights of the farmers and breeders;

(ii) to register extant and new plant varieties;

(iii) to develop characterisation and documentation of varieties;

(iv) to provide the compulsory licensing of protected varieties if the right holder does not arrange for production and sale of the seeds to ensure that protected seeds are available to the farmers;

(v) to collect statistics with regard to plant varieties, seeds and germplasm for compilation and publication.

11. The notes on *clauses* explain in detail the various provisions contained in the Bill.

12. The Bill seeks to achieve the aforesaid purpose.

NEW DELHI;

NITISH KUMAR

The 3rd December, 1999.

Notes on clauses

Clause 1.—This clause gives the short title of the Bill, the area of its operation and the date of commencement of the Act and its various provisions. As adequate steps have to be taken for administering the provisions of the proposed legislation, provision has been made to bring different provisions of the Act on different dates.

Clause 2.—This clause contains definitions of various expressions used in the Bill. The definitions of "Authority", "benefit sharing", "breeder", "convention country", "breeder", "denomination", "essential characteristics", "extant variety", "farmer", "Gene Fund", "germplasm", "plant", "seed" and "variety" are some of them. Any person who cultivates crops either by cultivation of the land himself or through any other person is defined as a farmer. A person who conserves and preserves severally or jointly with any other person any wild species or traditional variety of plants or add value to such wild species or traditional varieties through selection and identification of their useful properties shall also come within the definition of farmer. Plant in relation to a cultivated plant and its wild relative is defined as an organism or part thereof which belongs to the kingdom of plant which is not included in the animal kingdom. It also does not include micro-organism.

Clause 3.—This clause provides for the establishment of an Authority to be called the Protection of Plant Varieties and Farmers' Rights Authority. The Authority shall consist of a Chairperson and nine *ex officio* members including the Member-Secretary. The Chairperson shall be a person of outstanding calibre and eminence in the field of plant varietal research or in the related field of agricultural research and having not less than twenty-five years of practical experience in either field. The Registrar-General of Plant Varieties shall be the Member-Secretary of the Authority. The *ex officio* members include the Agriculture Commissioner, Horticulture Commissioner, Director of the National Bureau of Plant Genetic Resources, representatives of Ministries dealing with seeds, bio-technology environment and forests and law and Indian Council of Agricultural Research.

Clause 4.—This clause lays down detailed procedure for convening the meetings of the Authority.

Clause 5.—This clause seeks to provide for the appointment of various committees by the Authority for efficient discharge of its duties.

Clause 6.—This clause seeks to provide for the appointment of various officers and employees by the Authority for its efficient performance of its functions. It also enables the Central Government to lay down rules governing the method of appointment, salary and other terms and conditions of the officers and employees.

Clause 7.—This clause specifies that the Chairperson of the Authority shall be the Chief Executive of the Authority. His detailed powers and functions will be laid down in the rules.

Clause 8.—This clause lays down the detailed general functions of the Authority which includes promotion and development of new varieties of plants, protection of rights of the farmers and breeders with respect to these varieties of plants and various measures to be taken for developing characterisation and documentation of varieties.

Clause 9.—This clause provides that all orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any member authorised by the Authority.

Clause 10.—This clause enables the Authority to delegate its powers (except the power to make regulations under section 88), by order in writing to the Chairperson or any member or officer of the Authority subject to such conditions or limitations.

Clause 11.—This clause contains provisions for the establishment of a Registry called the Plant Varieties Registry at the Head Office of the Authority and branch offices at such other places as the Authority may think fit to register the plant varieties. The Authority shall appoint the Registrar General and such number of Registrars as may be necessary for registration of plant varieties.

Clause 12.—This clause seeks to maintain a register called the National Register of Plant Varieties at the Head Office of the Registry. The details of the breeder and salient features of the variety would be entered in the Register. The copies of this register can also be kept at the branch offices of the Registry as per the directions of the Authority.

Clause 13.—This clause provides for the filing of applications for registration of any plant variety.

Clause 14.—This clause lays down the criteria for registration of new varieties. The new variety shall be eligible for registration only if it conforms to the criteria of novelty, distinctiveness, uniformity and stability. An extant variety can be registered even if it does not conform to the criteria of novelty. If a variety contains any gene or gene sequences involving any harmful technology including terminator technology which is injurious to the life or health of human beings, animals or plants, can not be registered.

Clause 15.—This clause specifies the persons who can make applications for registration of a variety. The application can be made by any person either individually or jointly with any other person for registration of the variety.

Clause 16.—This clause seeks to provide for compulsory assigning of a single and distinct denomination to a variety for seeking registration by the applicant. The Authority shall make detailed regulations governing such assignment of denomination of plant varieties. Sub-clause (4) seeks to provide that every applicant shall cause the variety to be catalogued. The cataloguing will be done by such institutions or centre as may be notified by the Central Government.

Clause 17.—This clause lays down the detailed procedure for registration of plant varieties. The form of application, the documents and fee which may accompany an application and the manner in which such application shall be made will be specified by the Central Government by rules.

Clause 18.—This clause stipulates that at the time of application the breeder will provide prescribed quantity of seeds to the Registrar for the purpose of conducting various tests to establish its eligibility for registration. The applicant is required to deposit necessary fee for this purpose.

Clause 19.—This clause provides for the acceptance of the application of the breeder by the Registrar either absolutely or subject to such conditions or limitations as he may deem fit after examining the application. If the Registrar rejects an application he is required to give a reasonable opportunity to the applicant for presenting his case.

Clause 20.—This clause provides that where an application has been accepted, the Registrar shall cause the same to be advertised in such manner as may be prescribed by the Central Government by rules inviting objections from all persons interested in the matter. Any person may within three months from the date of advertisement of the application or within such further period, not exceeding thirty days in the aggregate, as the Registrar may, an application made to him alongwith the required fees, allows, give notice of his opposition to the registration. Sub-clause (3) lays down the grounds on which an opposition to the registration could be made.

An opposition could be made on the ground that the person opposing the application is entitled to the breeder's right as against the applicant for registration. The other grounds available for opposition of the application are that the variety is not registrable under the proposed legislation or that the grant of Certificate of Registration may not be in the

public interest. This clause also provides for hearing of the parties by the Registrar in relation to the opposition and grant of permission by him for correction or amendment to the notice of opposition or counter statement.

Clause 21.—This clause stipulates that the Registrar shall consider all the grounds of opposition for registration of a variety and give a reasoned decision.

Clause 22.—This clause seeks to specify the procedure for registration of essentially derived variety. The breeder of an essentially derived variety could exercise his rights for Plant Breeder's Rights if the authorization is given by the breeder of the initial variety subject to such terms and conditions as both the parties may mutually agree upon.

Clause 23.—This clause states that the Authority and Registrar will have all the powers of a civil court for the purposes of receiving evidence, administering oaths, etc.

Clause 24.—This clause deals with the issue of certificate of registration to the applicant with the seal of the Plant Varieties Registry which shall be valid for three years and may be renewed further so that total period of protection which will not be more than eighteen years in the case of trees and vines and in other cases fifteen years from the date of registration of variety. In the case of extant variety, the total period of protection is fifteen years from the date of the notification of that variety by the Central Government under the Seeds Act, 1966 or fifteen years from the date of registration as farmer's variety.

Clause 25.—This clause provides for periodic publication of list of varieties which have been registered by the Authority.

Clause 26.—This clause lays down the detailed procedure for determination of benefit sharing by the Authority. The amount of benefit sharing determined by the Authority is required to be deposited by the breeder of the Plant Variety in the National Gene Fund constituted under section 52. Sub-clause (7) of this clause provides that the amount of benefit sharing determined by the Authority shall, on a reference made by the Authority in the manner as may be provided by rules, be recoverable by the District Magistrate from the breeder liable for the benefit sharing as arrears of land revenue.

Clause 27.—This clause stipulates that every breeder will have to deposit such quantity of seeds or propagating materials including parental line seeds as may be specified in the regulations.

Clause 28.—This clause enables a breeder to authorise any person to produce, sell, market or otherwise to deal with the registered variety subject to such limitations and conditions as may be laid down in the regulations. Sub-clause (5) enables the Registrar to issue a certificate of Registration to the agent or licensee duly authorised. This clause also seeks to confer an exclusive right on the breeder or his licensee to produce, sell, market, distribute, import or export the variety. The Registrar will also have power to cancel the registration if the licensee fails to comply with certain provision of the proposed legislation.

Clause 29.—This clause provides that registration of a variety will not be allowed in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal or plant life and health or to avoid serious prejudice to the environment. The Central Government can exclude any genus or species from the purview of protection in public interest.

Clause 30.—This clause provides for researchers' rights for use of any protected variety for research or experimental purpose. The use of and variety registered under the proposed legislation by any person for conducting experiments and research is and for use as an initial source of variety for the purpose of creating other varieties shall not be prevented by the operation of the proposed legislation. However, the authorisation of a breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

Clause 31.—This clause provides that nothing contained in the proposed legislation shall affect the right of a farmer to save, use, exchange, share or sell his farm produce of a variety protected under the legislation. However, a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a commercial marketing arrangement.

Clause 32.—This clause makes a special provisions relating to application for registration of varieties from citizens of convention countries. This clause also empowers the Central Government to declare any country which affords to citizens of India similar privileges as are granted its own citizens and in order to fulfil a treaty, convention or arrangement with that country as a convention country for the purposes of the proposed legislation.

Clause 33.—This clause confers rights of reciprocity to the citizens of convention countries for protection of plant varieties. In case a country does not provide similar treatments to citizens of India, no nation of such country shall be entitled, either solely or jointly with any other person to apply for registration of a variety or is entitled to get a variety registered under the proposed legislation.

Clause 34.—This clause provides that except as otherwise provided in the proposed legislation, no person shall produce or cause to be produced or sell or offer to sell or cause to be sold or cause to be offered to be sold or market or cause to be marketed or export or cause to be exported or import or cause to be imported any variety registered under this Act unless he has obtained authorisation as an agent or licensee from the registered breeder of such variety and has been registered as such under this Act.

Clause 35.—This clause provides for surrender of certificate of registration by the breeder.

Clause 36.— provides for revocation of protection on certain grounds.

Clause 37.—refers to the provision for imposition by the Central Government of an annual fee to be paid by every breeder of a variety for retention of their registration.

Clause 38.—This clause provides that Registrar of the Authority may pass an order for cancellation or changing any certificate or registration of plant varieties on certain grounds.

Clause 39.—This clause provides that Registrar on an application by the breeder of a variety may correct any error in the register or change the name, address or description of such breeder.

Clause 40.—This clause seeks that the breeder of a registered variety may apply to the Registrar for alteration of denomination of a registered variety.

Clause 41.—This clause states that after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seeds have not been satisfied or not available at the reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seeds or other propagating material of that variety. The Authority after giving an opportunity to the breeder of such variety, may order such breeder to grant a licence to the applicant upon such terms and conditions as may be deemed fit.

Clause 42.—This clause deals with situations when requirement of public for seeds of a variety have not been satisfied.

Clause 43.—This clause deals with the adjournment of hearing of the application for grant of compulsory licence on certain grounds.

Clause 44.—This clause stipulates that the Authority shall determine the duration of the compulsory licence keeping in view the gestation period and other relevant factors.

Clause 45.—This clause stipulates that the Authority shall determine the terms and conditions of compulsory licence.

Clause 46.—This clause provides for revocation of compulsory licence by the Authority on its own motion or on an application from an aggrieved person that the compulsory licensee has violated the terms and conditions of the licence.

Clause 47.—This clause seeks to provide that the Authority may modify the terms and conditions of the compulsory licence.

Clause 48.—This clause provides for rights of the village or farming community for getting compensation for their contribution in the evolution of new variety.

Clause 49.—This clause provides for framing of schemes for apportionment of amounts under benefit sharing arrangements and compensation to village communities.

Clause 50.—This clause provides for an appeal to the High Court against any decision or order of the Authority.

Clause 51.—This clause empowers High Court to make rules consistent with the provisions of the proposed legislation for the conduct of all proceedings under this Act.

Clause 52.—provides for constitution of a National Gene Fund from contribution of benefit sharing, annual fees payable by way of royalty, compensation to the village community and contribution from national and international organisations and other sources. The funds shall be utilised for the payment of benefit sharing to the claimant, compensation to the village community for exploitation of their variety, for conservation and sustainable use of genetic resources, etc.

Clause 53.—This clause enables the Central Government to provide grants and loans to the Authority for the implementation of the various provisions of the proposed legislation. This may be done after due appropriation as may be made by Parliament.

Clause 54.—This clause enables the Central Government to constitute a fund to be called the Protection of Plant Varieties Authority Account. All the grants and loans made to the Authority by the Central Government under clause 53, all fees received by the Authority and Registrar, except the annual fee received by way of royalty and all sums received by the Authority from the other sources as may be decided upon by the Central Government shall form the corpus of the aforesaid account. The moneys in the account could be applied for meeting the various expenses which may be incurred by the Authority in the due discharge its functions and for the purposes of the proposed legislations including payment of salaries, etc., to the Chairperson, officers and other employees of the Authority and allowances, if any, payable to the members.

Clause 55.—This clause provides that Authority shall prepare the budget, maintain proper accounts and other relevant record and prepare an annual statement of accounts in consultation with the Controller and Auditor General of India. Accounts of the Authority shall be audited by the Controller and Auditor General of India. The accounts of the Authority shall be laid down before each House of the Parliament.

Clause 56.—This clause provides that the Chairperson should exercise such financial and administrative powers as may be prescribed by rules made under the proposed legislation.

Clause 57.—This clause seeks that any person who is not the original breeder of a variety or a licensee of that variety if sells, exports, imports or produce such variety, will cause an infringement of the right of the breeder.

Clause 58.—This clause seeks to provide that no suit for the infringement of a variety registered under the proposed legislation shall be instituted in any court inferior to a District Court.

Clause 59.—This clause seeks to provide for reliefs in suit for infringement.

Clause 60.—This clause seeks to provide that the court may seek independent opinion of scientific adviser on a question of fact or a scientific issue in forming an opinion.

Clause 61.—This clause seeks to prohibit use of denomination of a registered variety by a person other than the breeder of the registered variety.

Clause 62.—This clause provides that anybody who uses the denomination of a registered variety without the assent of the breeder will be treated as falsely applying the denomination of a variety.

Clause 63.—This clause provides for the penalty for applying false denomination to a variety registered under the proposed legislation will be imprisonment for a term which shall not be less than three months but which may extend to two years and with fine which shall not be less than five thousand rupees but which may extend to ten lakh rupees.

Clause 64.— This clause lays down the penalty for selling variety with false denomination. The penalty will be imprisonment for a term not less than six months and upto two years and with fine which shall not be less than fifty thousand rupees but which may extend to ten lakh rupees.

Clause 65.—This clause seeks to lay down the penalty for falsely representing a variety as registered with an imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

Clause 66.—This clause lays down the penalty for subsequent offences (having convicted earlier under the proposed legislation) with imprisonment for a term which shall not less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty lakh rupees.

Clause 67.—This clause seeks to provide that the provisions of the proposed legislation relating to the offences shall be subject to the rights recognised by it.

Clause 68.—This clause provides for exemption of certain persons employed in the ordinary course of business who are accused of any offence under the proposed legislation from any liability if they had acted without any intention to commit the alleged offence and had taken all reasonable precautions against the commission of the offence charged and had no reason to suspect the genuineness of the act so charged and on demand made by or on behalf of the prosecutor had given all information in their power with respect to the matter and then they shall be acquitted.

Clause 69.—This clause lays down the procedure where the invalidity of registration is pleaded by an accused. This clause relates to offences in relation to a variety or its propagating material or essentially derived variety or its propagating material registered under the proposed legislation. This provision also enables the accused to get the registration suitably rectified within the time permissible under the proposed legislation failing which the registration shall be deemed to have been invalid and the court shall proceed with the case accordingly.

Clause 70.—This clause contains provisions for offences by companies. This clause seeks to provide that where a person committing offence is a company, every person responsible in the company for the conduct of its business will be liable. Where a person accused proves that the offence was committed without his knowledge he will not be liable. However, where it is proved that an offence has been committed with the consent or connivance or is attributable to the neglect of any director, manager, secretary or any other officer of the company, he shall be deemed to be guilty of the offence.

Clause 71.—This clause empowers the Central Government to specify actions required to be taken by the Authority or Registrar including cancellation of registration of varieties in the interest of security of India. The *Explanation* to this clause defines the expression "security of India."

Clause 72.—This clause seeks to provide that the sellers shall be deemed to warrant that a denomination is a genuine denomination and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of sale if the denomination of a variety or its propagating material or essentially derived variety or its propagating material is registered under the proposed legislation.

Clause 73.—This clause provides that in case of death of a party to a proceeding under the proposed legislation (not being a proceeding in a court) during the course of the proceedings, the Authority or the Registrar, as the case may be, on proof to its or his satisfaction may allow substitution of the successor of such party or may allow the proceeding to continue with the surviving parties.

Clause 74.—This clause refers to the rights of registered agents and the registered licensees to institute appropriate proceedings in court on behalf of the breeder of any variety or its propagating material or essentially derived variety or its propagating material, as the case may be, in case such agents or licensees have been authorised by the breeder, as per the rules, for doing so.

Clause 75.—This clause provides that a certified copy of any entry in the register or any document issued under the proposed legislation and sealed with the seal of the Registrar or the Authority, as the case may be, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original. Sub-clause (2) provides that a certificate issued by the Registrar as to any entry, matter or thing, he is authorised to do shall be *prima facie* evidence of the entry having been made and of the contents thereof.

Clause 76.—This clause states that the Authority or the Registrar or any officer working under the Authority, shall not be compelled to produce the register and other documents if the contents of such documents can be proved by production of their certified copies issued under the proposed legislation or to appear as a witness to prove the matters recorded therein unless otherwise ordered by the court for special reasons.

Clause 77.—This clause provides for the inspection of documents and taking of certified copies thereof in respect of documents in any proceedings pending before the Authority or the Registrar. Any member of the public may inspect the documents or any entry therein and also obtain a certified copy of such documents or any entry therein on payment of the prescribed fee and on making an application to the concerned Authority.

Clause 78.—This clause stipulates that the Central Government shall cause placing of a report regarding the performance of the Authority under the proposed legislation once a year before both the Houses of Parliament.

Clause 79.—This clause states that the provisions of the proposed legislation shall be binding on the Government.

Clause 80.—This clause provides that all proceedings before the Authority or the Registrar, as the case may be, relating to registration of variety or essentially derived variety or registration of agent or licence or registration of compulsory licencing under the proposed legislation shall be deemed to be judicial proceedings and the Authority or the Registrar, as the case may be, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Clause 81.—This clause provides for protection of action taken in good faith by the Central Government, Chairperson, members of the Authority or the Registrar or any person acting under any of them from any suit, prosecution or other legal proceedings.

Clause 82.—This clause provides that no civil court shall have jurisdiction in respect of any matter which the Authority or the Registrar is empowered with or under the proposed legislation to determine.

Clause 83.—This clause states that the Chairperson, members of the Authority and officers and the other employees of the Authority and the Registrar General and the officers and the other employees working under him shall be deemed to be public servants.

Clause 84.—This clause seeks exemption of the Authority from any tax on wealth, income or profits and gains derived.

Clause 85.—This clause states that the provisions of the proposed legislation shall have overriding effect on all other laws for the time being in force or anything inconsistent with the proposed legislation contained in any instrument.

Clause 86.—This clause empowers the Central Government to remove any difficulties which may arise in giving effect to the provisions of the proposed legislation by order published in the Official Gazette. Such order shall not be inconsistent with the provisions of the proposed legislation. This power can be exercised only within two years from the commencement of the proposed legislation. Every such order shall be required to be laid before Parliament.

Clause 87.—This clause empowers the Authority to make regulations consistent with the provisions of the proposed legislation and the rules made thereunder. Such regulations are required to be made with the previous approval of the Central Government and by notification in the Official Gazette. Sub-clause (2) of this clause enumerates the various matters in respect of which such regulations may be made.

Clause 88.—This clause empowers the Central Government to make rules to carry out the provisions of the proposed legislations. Sub-clause (2) enumerates the various matters in respect of which such rules may be made. These matters, *inter alia*, include the term of office of the Chairperson, the manner of filling the posts of the Chairperson, the salary and allowances payable to the Chairperson, the manner of arranging production and sale of seeds, the fee payable for various acts under the proposed legislation and the preparation of annual statement of accounts of the Authority.

Clause 89.—This clause seeks to provide that every rule made and every scheme framed by the Central Government and every regulation made by the Authority shall be laid before Parliament.

FINANCIAL MEMORANDUM

Clause 3 proposes to set up an independent statutory Authority to be known as the "Protection of Plant Varieties and Farmers' Rights Authority". The recurring expenditure towards salary, allowances and other expenditure relating to the Chairperson, members and other officers and employees of the Authority appointed under clause 6 will be of the order of Rs. 126 lakhs per annum. The other recurring expenditure by way of rent, maintenance and training, etc., will be of the order of Rs. 83 lakhs per annum. Non-recurring expenditure by way of purchase of accommodation, furniture and fixtures, office equipments, vehicles, etc., will be approximately of the order of 168 lakh rupees.

2. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 49 of the Bill empowers the Central Government to frame, by notification in the Official Gazette, one or more schemes, for the purposes relating to the contribution of village or local communities in the evolution of plant varieties and the benefit sharing in relation to plant varieties. Sub-clause (2) of that clause enumerates the various matters in respect of which such scheme or schemes may be framed. These matters, *inter alia*, include the Registration of claims for the purposes of rights of communities, utilisation of benefit sharing for the purposes relating to breeding, discovery and development of varieties and procedure for disbursal of apportionment of claims by the Authority in the event of disputes.

2. Clause 87 of the Bill empowers the Central Government to make rules, by notification in the Official Gazette, to carry out the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matters with respect to which rules may be made under the proposed legislation. These matters, *inter alia*, relate to the terms of office, the salary and allowances and conditions of service of Chairperson of the Authority, the time and place of the meetings and transaction of business of the Authority, the appointment, pay and other conditions of service of the officers and employees of the Authority, registration of plant varieties, the salary, allowances and conditions of service of Registrar, maintenance of National Register of Plant Varieties, the various forms of applications and the fees to be accompanied with them and other particulars relating to them, the manner and method of conducting tests, the manner of submitting evidence, the form of certificates of registration and other matters relating thereto, the manner of issuing notices and filing oppositions, the manner of authorising registered agents and registered licensees and other matters of a procedural nature.

3. Clause 88 of the Bill empowers the Plant Varieties and Farmers' Rights Protection Authority to make regulations, by notification in the Official Gazette and with the previous approval of the Central Government and consistent with the provisions of the proposed legislation and the rules, to carry out the provisions of the legislation. Sub-clause (2) of that clause enumerates the various matters with respect to which regulations may be made under the proposed legislation. These matters, *inter alia*, relate to the duties and jurisdiction and conditions of service of Registrar, assignment of denominations of varieties and other matters relating thereto, quantity of seeds and other propagating materials to be deposited by the breeders and other matters of procedural nature.

4. The rules, regulations and schemes made under the proposed legislation shall be required to be laid before Parliament.

5. The aforesaid matters in respect of which rules, regulations or schemes may be made or framed relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

G. C. MALHOTRA,
Secretary-General.

